

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2767 OF 2003

M/s. Sumukha Power Systems
Pvt. Ltd.

...Applicants.

V/s

1. M/s Standard Capacitors
Pvt. Ltd. and Ors.

...Respondents.

Mr. Kuldip S. Patil holding for Prakash M. Chalke
for the applicants.

Mr. S.V. Kotwal for respondent No.1.

Mr. D.P. Adsule for the State.

CORAM: V.M.KANADE,J.

DATE: 17th March, 2005

P.C.:

1. Heard the learned counsel for the applicants and

the learned Counsel for respondent No.1.

2. Applicants are challenging the issuance of process by the Trial Court on the complaint filed by the respondent No.1 under section 138 of the Negotiable Instruments Act. Applicants submit that the cheque which was issued in favour of the payee was not presented within a period of six months as prescribed under section 138 of the Negotiable Instruments Act and, therefore, essential prerequisite of the said provision has not been complied with and, therefore, the complaint itself was not maintainable. The

learned Counsel appearing on behalf of the applicants submitted that, admittedly, facts are that the cheque was drawn in favour of the payee on 10/10/1998. It was presented by payee in his Bank on 9/4/1999 and it was received by the Bank on which the cheque was drawn on 10/4/1999. It is submitted that thus the period of six months expired on 9/4/1999 itself. He submitted that, therefore, the complaint was not maintainable. In support of the said submission, he relied upon the Judgment of the Supreme Court in the case of Shri Ishar Alloy Steels Ltd. Vs. Jayaswals Neco Ltd. reported in (2001) 3 SCC 609 in which the Supreme Court considered the issue of the validity of the cheque which was presented beyond the period of its validity. The Supreme Court in the said judgment has observed that the provisions of section 138 have to be construed strictly. The Supreme Court in the said judgment approved the view taken by the Punjab & Haryana High Court and Gujarat High Court and disagreed with the view taken by the Madras High Court.

3. The learned Counsel appearing on behalf of respondent No.1 invited my attention to the memo which was issued by the Bank in which the cheque was dishonoured not because the cheque was presented

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beyond the period of validity but because the funds were not arranged. He further submitted that while calculating the period of six months the date on which the cheque was issued will have to be excluded and if the period is then calculated, the cheque was presented within six months. He further submitted that this issue ultimately will have to be decided by the Trial Court after the evidence is led by both the parties. Therefore, this Court should not interfere with the order of issuing process.

4. In my view, the submissions made by the learned Counsel for the respondent No.2 will have to be accepted. The Bank Memo does indicate that the cheque was not returned because it was out of date but because the funds were not arranged for. The issue whether, in fact, period of six months expired on 9/4/1999 or 10/4/1999, therefore, will have to be decided after the evidence is led by both the parties. Criminal Application, therefore, is dismissed. All questions raised in this application are kept open and will be decided by the Trial Court after evidence is adduced by both the parties.

V.M. KANADE, J.